

**Foxborough Planning Board  
Meeting Minutes  
March 31, 2011  
Town Hall**

**Members Present:** Kevin Weinfeld, William Grieder, Gordon Greene, John Rhoads (arrived at 7:20 p.m.)

**Members Absent:** Scott Barbato, Ron Bressé

**Also Present:** Planner Marc Resnick

**7:10 p.m. Review of old business**

**Review of meeting minutes**

The Board reviewed the minutes of December 9, 2010, the Board discussed the revisions that were made at the previous meeting and noted that they were incorporated into the minutes.

**Motion** by William Grieder to approve minutes of December 9, 2010 as revised. Seconded by Kevin Weinfeld. Unanimous Affirmative Vote (3:0)

**7:25 p.m. Request for Waiver of Site Plan Review  
97 Chestnut Street  
Differentials, LLC**

K.Weinfeld recused himself from the discussion as he is a direct abutter to the project.

Applicant Jack Farrell was present along with his attorney, John Lovely. J.Lovely explained that Mr. Farrell owns an equipment rental business. He is purchasing the building at 97 Chestnut Street, the lot is in the R-15 zoning district and the commercial use is a pre-existing, non-conforming use. He stated that they presented the project to the Zoning Board of Appeals who granted a Special Permit for a change of use. There were a number of the issues for site plan which were discussed at the ZBA meeting. He stated that neighbors supported the project at the ZBA meeting. He stated that they will be installing a fence, will add screening and no additional outside lighting will be installed.

Gordon Greene stated that he would like to see a list of the items to be rented, adding that he is concerned about the site, the septic, and that this could be considered a substantially different operation than previous. He stated that typically rental places are visited by diesel pickups, landscapers and he is uncomfortable with the access to the property. He would also require that a condition be added requiring that the screening be maintained. J.Lovely stated that the ZBA approval references the type of equipment to be used. G.Greene stated that he would like to see a full equipment list. J.Farrell stated that the business is mostly a party rental business with inflatables, tents, tables, chairs. He stated that a small portion of the business is landscaping equipment rental. He stated that 95% of the business is party equipment rental. He stated that he started doing small equipment rentals last summer; it is a small part of the business and is

considering not continuing it. The equipment consists of slice seeders, aerators, thatchers, rototiller, leaf blowers, and weed whackers.

W.Grieder stated that he would like to review the list of conditions of the ZBA approval.

J.Rhoads asked what type of relief was granted by the ZBA. J.Lovely stated that they needed relief for the use and nonconforming structure and the addition of storage containers. J.Rhoads asked what the conditions for access and egress are; whether curb cut would change and about the intensity of the use compared to previous uses of the building. J.Lovely stated that a florist shop knows as the Country Cottage operated prior to this business. He stated that the florist shop had longer hours, also equipment rental is seasonal, April to October. The business model is that more than 75% of the orders are done via phone; there is one delivery truck for equipments. They expect 1.2 retail vehicle trips to the property. J.Rhoads asked if there would be signage or striping directing flow of traffic. J.Farrell stated that there are small signs, but will improve those. J.Lovely stated that a fence will run property bounds and would shield equipment from street view. J.Farrell added that the ZBA required that equipment not be displayed at the front of the building.

J.Rhoads stated that the information provided to the ZBA states that 95% of the business is for party rental and only 5% for landscaping, if mix is changed, then the approval is voided. M.Resnick stated that this would be difficult to enforce

M.Resnick stated that he agrees with G.Greene about the concern of noise, equipment needs maintenance and this could create more noise. He stated that the rental of construction/landscaping equipment poses a problem. He would be less concerned if it was only party rentals. He stated that bigger tents are set up day before and asked are early set ups dealt with when store is not open until 9:00 a.m. J.Farrell stated that the tents are set up day before the event and removed the day after. He stated that the day of event, only inflatables and chairs are delivered. M.Resnick asked if trucks would be loaded the night before for early deliveries. J.Farrell responded that they are loaded the night before an event. M.Resnick asked about equipment repairs. J.Farrell responded that major repairs are done at a shop elsewhere. M.Resnick stated that if the site is in the WRPOD, the landscaping equipment may be a problem.

J.Rhoads stated that he feels comfortable with party rental, but uncomfortable with landscaping equipment. He asked if new paving will take place. J.Lovely responded that there will be no changes in the paving, will use what is there.

M.Resnick stated that according to Section 9.4.8.7 of the Zoning By-Laws, the use could be prohibitive but it's dependent on the interpretation. J.Rhoads stated that the change could require a Special Permit according to Section 9.4.9.4.

J.Lovely stated that Mr. Farrell will be closing on the property purchase on April 12<sup>th</sup> and asked that the Board consider his client's position.

G.Greene stated that he would prefer that a site plan review be required. W.Grieder stated that he would feel comfortable if it's strictly party rental business. He stated that he understands that potential abutters are behind the project.

Comments from the public:

Kevin Weinfeld, 43 Granite Street – He stated that he is a direct abutter. He stated that he met with Mr. Farrell at the site, walked through the area and did not feel that this would be a big change for the neighborhood. He stated that he also visited Mr. Farrell’s existing location and was impressed by it, the site was clean and there was no rental equipment strewn. He stated that the Board should request a letter of opinion from Mr. Casbarra with a determination if a special permit is needed.

J.Lovely asked if, in the past, a waiver has been issued with conditions. M.Resnick responded that a waiver with conditions has been granted in the past. He stated that the Board could approve the waiver with the caveat that the only approved use be the party rental equipment and would remove the need for special permit per 9.4.9.4 if it’s determined by the Zoning Enforcement Officer that a special permit is not needed.

J.Rhoads stated that if a Special Permit is necessary, then a site plan review could be done at the same time.

W.Grieder suggested that the discussion be tabled to later in the meeting so other agenda matters can be handled.

**8:30 p.m. Request for reduction of performance guarantee  
“Highlawn Farm” subdivision  
Michael Intoccia**

Attorney Bob Shelmerdine was present. He stated that they are seeking a reduction of the bond so street lights can be ordered. He stated that he has a letter from Michael Intoccia agreeing to the deadlines set by the Board. He stated that the bank will issue a check to pay for the lights directly to the vendor. He stated that taxes haven’t paid, but he has email from John Galvani of Norwood Bank stating that they will have money to pay for taxes.

K.Weinfeld stated that at the last meeting Doug King submitted a letter requesting that the Board not reduce the bond as it would be in violation of a court order. He stated that the Board sought a legal interpretation from Town Counsel for this matter. He stated that Town Counsel responded that “the Board should process Intoccia’s application for a reduction of the performance bond for the subdivision pursuant to the provisions of MGL c41, Section 81U... the Board is not subject to the Court order because it is not a party to the litigation in which the Court order was issued.”

K.Weinfeld stated that the other open item is difference between bond and current estimate. B.Shelmerdine stated that Mr. Intoccia deals with the financial matters he understand the issue of the increase, but project manager Bob Hearn stated that the installation of electrical should be removed from the estimate. He stated that if the Board votes to release funds, the May 15<sup>th</sup> deadline for the installation of lights can be met. M.Resnick stated that a separate conduit for the lights needed to be installed when the initial conduit was done. M.Resnick stated that the sidewalk could be completed to base coat. K.Weinfeld asked how the lights can be installed if there no conduit is installed, adding that such work needs to be done prior to the installation of lights. M.Resnick stated that bases and other costs are not included in the estimate. W.Grieder stated that if the lights are installed and the applicant can’t keep them lit; what recourse the Town has to ensure that the lights remain lit.

K.Weinfeld asked for an update on the taxes issues. B.Shelmerdine stated that Revenue Officer Lisa Sinkus prepared a listing of monies owed today. He stated that \$27,000.00 will be overdue by tomorrow morning and they will have \$30,000.00 tomorrow to pay these taxes. He stated that they now have a list of monies owed and deadlines. He stated that a Town can withhold permits if taxes are more than 1 year late; Board of Selectmen need to have hearing and vote to rescind anything that's been issued.

B.Shelmerdine submitted letter from Mr. Intoccia agreeing to the deadlines set by the Board. He stated that as of tomorrow afternoon, no more debris in property not owned by Intoccia. M.Resnick stated that he visited the site and it appears that the debris was moved to lots owned by Intoccia.

W.Grieder asked how the trees will be purchased for the open space restoration. M.Resnick stated that the approval states 100 trees need to be planted. G.Greene stated if the money is released, how the conduit will be paid for. B.Shelmerdine responded that there's time to raise funds to pay for it.

M.Resnick stated that ideally, the Board should not release funds, but if there's a guarantee that the check is written directly to the seller; a guarantee that the conduit will be installed; and a guarantee that electric bills are paid then the Board could release the funds. He stated that the Town needs to get an easement for drainage from North Street to the basin in the rear of lot B-4. He stated that some of the drainage from North Street would go into the basin, the easement would be unnecessary when the open space parcel is deeded to the Town. He stated design engineer William Buckley has a plan showing the easement. He stated that the Board could release the funds if Mr. Intoccia agrees to grant the easement. B.Shelmerdine agreed to the easement. J.Rhoads stated that since performance is a problem, the signed easement should be submitted prior to releasing any funds.

The Board discussed the conditions for the release of funds: the check should be made directly to Baynes electric to purchase the street lights; submission of signed easement and payment to Finance for the taxes in arrears.

**Motion** by W.Grieder to release \$22,539.65 directly to Baines pending conditions discussed. Seconded by G.Greene. Unanimous Affirmative Vote (4:0)

**9:05 p.m.           Continuation of Request for Waiver of Site Plan Review  
                          97 Chestnut Street  
                          Differentials, LLC**

J.Lovely stated that the ZBA granted a Special Permit for this project. He suggested that the Board condition that client not violate 9.4.8 which precludes the landscaping equipment rental

J.Rhoads stated that if it's determined that the use is not in violation of 9.4.9.4, then he could agree to granting the waiver.

**Motion** by J.Rhoads to approve the waiver of site plan review with the conditions that no rental of landscaping equipment is conducted on the premises and that the Zoning Enforcement Office grant a determination that Section 9.4.9.4 of the Zoning By-Laws is not applicable. Seconded by W.Grieder. Affirmative Vote (2:0:1)(G.Greene abstained)

**9:20 p.m. Informal discussion with representatives of The Kraft Group concerning possible zoning changes**

Attorneys John Twohig and Peter Tamm were present. J.Twohig explained that they would like to discuss two categories of zoning changes: comprehensive renewable energy and zoning clarifications to encourage economic development. P.Tamm distributed an agenda for discussion.

**Comprehensive Renewable Energy**

P.Tamm explained that they would like to establish a comprehensive bylaw to promote the development of renewable energy facilities. The By-Law would define renewable energy, solar energy, wind energy & other types (co-generation, geothermal, etc.). Would include regulations for wind facilities and provisions for height (2 tiered: on-site and utility-scale facilities); adequate setbacks; limited lighting/signage; minimize shadow/flicker; limited land clearing; sound levels; structural safety; utility connections; system conditions; removal requirements with surety/bonding.

P.Tamm stated that the State has established a model by-law that communities can modify as needed. He stated that there's no differentiation between residential or utility-scale except for size. He stated that they could be allowed by Special Permit in certain districts.

P.Tamm stated that currently there is a gap in the By-Laws where these uses are not considered, adding that this should not only be wind energy, but include other types of renewable energy.

J.Rhoads asked what determines density. P.Tamm responded that setback requirements would determine density. M.Resnick asked if there is a technical reason that the turbines can't be close together. P.Tamm responded that the span of the rotors is significant. W.Griender stated that the noise of multiple turbines can be bothersome. J.Twohig stated that smaller turbine technology is advancing.

**Zoning Clarifications to Support Economic Development**

P.Tamm stated that these proposed changes have been discussed with Building Commissioner Casbarra. He stated that there are 6 categories:

- **Table of uses (Section 3)** – Would address Transportation Facilities; Accessory uses within a building devoted to a principal use; and Wind Turbines. P.Tamm stated that the current limitation for accessory uses is not to exceed 15% of the building. M.Resnick stated that a list of accessory uses that makes sense should be created; if they are permitted uses, then the size should not be limited.
- **Structures in the Public Interest (Section 4.5)** – requested by the Building Commissioner. Would address necessary municipal/public functions, such as Electrical Substations and Train/Transportation Facilities.
- **Parking Table (Section 6)** – Would add a new section for High-Tech Office Facilities to Table 6-1, requiring 1 parking space per 500 square feet.
- **Water Resource Protection Overlay District (Section 9.4)** – also requested by the Building Commissioner. Would allow both public and private treatment works provided they meet strict requirements of MA Groundwater Discharge Permit Program. Would also allow for washing/servicing of vehicles/boats only if incidental to an allowed use.
- **Economic Development Area Overlay District (Section 9.5)** – Would add the following uses to Permitted Uses (9.5.4):
  - Renewable Energy Facilities subject to Site Plan Review/Approval
  - Gas/Car Wash incidental to retail

- High Tech Office Facilities
- Commuter Rail/Bus Facilities
- Spas
- Single & Multi-Family Residential
- At-grade or subsurface parking structures
- Conference Centers, business meetings, trade shows, educational programs, religious services, etc.

Would add the following to Dimensional Standards (9.5.6):

- Multiple buildings on a lot
- Buildings 300' away from Route One and 200' away from residential, up to 220'
- Lots can be separated by pedestrian, bicycle, vehicular transportation path or right-of-way
- Split-lot provision with 100' setback of natural buffer

- **Definitions (Section 11)** – also requested by the Building Commissioner. Would add definitions for the following: Municipal Recreation Facility owned/operated by the Town or open to the public; High Tech Office Facility; Spa.

P.Tamm stated that they may also review the signage provision in the General By-Laws for the EDA, they're not for mixed use facilities. W.Griender stated that there is a Sign By-Law Review Committee that was recently formed and should be consulted.

**10:30 p.m.** Meeting adjourned.

Approved by: Kevin Weinfeld, Chairman

Date: August 25, 2011